

**AMENDMENT TO THE COMMITTEE PRINT OF
H.R. 2557
OFFERED BY MR. DUNCAN AND MR. COSTELLO**

At the end of title II of the bill, insert the following:

1 **SEC. 2032. INDEPENDENT PEER REVIEW.**

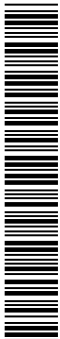
2 (a) PROJECT STUDIES SUBJECT TO INDEPENDENT
3 PEER REVIEW.—

4 (1) IN GENERAL.—Project studies shall be sub-
5 ject to a peer review by an independent panel of ex-
6 perts as determined under this section.

7 (2) SCOPE.—The peer review may include a re-
8 view of the economic and environmental assumptions
9 and projections, project evaluation data, economic
10 analyses, environmental analyses, engineering anal-
11 yses, formulation of alternative plans, methods for
12 integrating risk and uncertainty, models used in
13 evaluation of economic or environmental impacts of
14 proposed projects, and any biological opinions of the
15 project study.

16 (3) PROJECT STUDIES SUBJECT TO PEER RE-
17 VIEW.—

18 (A) MANDATORY.—A project study shall
19 be subject to peer review under paragraph (1)
20 if the project has an estimated total cost of



1 more than \$50,000,000, including mitigation
2 costs, and is not determined by the Chief of
3 Engineers to be exempt from peer review under
4 paragraph (6);

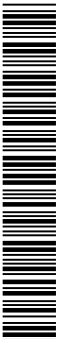
5 (B) DISCRETIONARY.—A project study
6 may be subject to peer review if—

7 (i) the Governor of an affected State
8 requests a peer review by an independent
9 panel of experts;

10 (ii) the head of a Federal or State
11 agency charged with reviewing the project
12 study determines that the project is likely
13 to have a significant adverse impact on en-
14 vironmental, cultural, or other resources
15 under the jurisdiction of the agency after
16 implementation of proposed mitigation
17 plans and requests a peer review by an
18 independent panel of experts; or

19 (iii) the Chief of Engineers determines
20 that the project study is controversial.

21 (4) CONTROVERSIAL PROJECTS.—Upon receipt
22 of a written request under paragraph (3)(B) or on
23 the initiative of the Chief of Engineers, the Chief of
24 Engineers shall determine whether a project study is
25 controversial.



1 (5) FACTORS TO CONSIDER.—In determining
2 whether a project study is controversial, the Chief of
3 Engineers shall consider if—

4 (A) there is a significant public dispute as
5 to the size, nature, or effects of the project; or

6 (B) there is a significant public dispute as
7 to the economic or environmental costs or bene-
8 fits of the project.

9 (6) PROJECT STUDIES EXCLUDED FROM PEER
10 REVIEW.—Project studies that may be excluded from
11 peer review under paragraph (1) are—

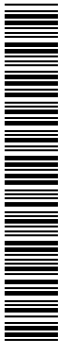
12 (A) a study for a project the Chief of En-
13 gineers determines—

14 (i) is not controversial;

15 (ii) has no more than negligible ad-
16 verse impacts on scarce or unique cultural,
17 historic, or Tribal resources;

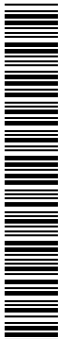
18 (iii) has no substantial adverse im-
19 pacts on fish and wildlife species and their
20 habitat prior to the implementation of
21 mitigation measures; and

22 (iv) has, before implementation of
23 mitigation measures, no more than a neg-
24 ligible adverse impact on a species listed as
25 endangered or threatened species under



1 the Endangered Species Act of 1973 (16
2 U.S.C. 1539 et seq.) or the critical habitat
3 of such species designated under such Act;
4 and

5 (B) a study for a project pursued under
6 section 205 of the Flood Control Act of 1948
7 (33 U.S.C. 701s), section 2 of the Flood Con-
8 trol Act of August 28, 1937 (33 U.S.C. 701g),
9 section 14 of the Flood Control Act of 1946 (33
10 U.S.C. 701r), section 107(a) of the River and
11 Harbor Act of 1960 (33 U.S.C. 577(a)), section
12 3 of the Act entitled “An Act authorizing Fed-
13 eral participation in the cost of protecting the
14 shores of publicly owned property”, approved
15 August 13, 1946 (33 U.S.C. 426g), section 111
16 of the River and Harbor Act of 1968 (33
17 U.S.C. 426i), section 3 of the Act entitled “An
18 Act authorizing the construction, repair, and
19 preservation of certain public works on rivers
20 and harbors, and for other purposes”, approved
21 March 2, 1945 (33 U.S.C. 603a), section 1135
22 of the Water Resources Development Act of
23 1986 (33 U.S.C. 2309a), section 206 of the
24 Water Resources Development Act of 1996 (33
25 U.S.C. 2330), or section 204 of the Water Re-

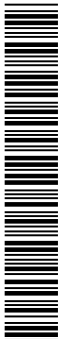


1 sources Development Act of 1992 (33 U.S.C.
2 2326).

3 (7) APPEAL.—The decision of the Chief of En-
4 gineers whether to peer review a project study shall
5 be published in the Federal Register and shall be
6 subject to appeal by a person referred to in para-
7 graph (4)(B)(i) or (4)(B)(ii) to the Secretary of the
8 Army if such appeal is made within the 30 day pe-
9 riod following the date of such publication.

10 (8) DETERMINATION OF PROJECT COST.—For
11 purposes of determining the estimated total cost of
12 a project under paragraph (3)(A), the project cost
13 shall be based upon the reasonable estimates of the
14 Chief of Engineers at the completion of the recon-
15 naissance study for the project. If the reasonable es-
16 timate of project costs is subsequently determined to
17 be in excess of the amount in paragraph (3)(A), the
18 Chief of Engineers shall make a determination
19 whether a project study should be reviewed under
20 this section.

21 (b) TIMING OF PEER REVIEW.—The Chief of Engi-
22 neers shall determine the timing of a peer review of a
23 project study under subsection (a). In all cases, the peer
24 review shall occur during the period beginning on the date
25 of the completion of the reconnaissance study for the



1 project and ending on the date the draft report of the
2 Chief of Engineers for the project is made available for
3 public comment. Where the Chief of Engineers has not
4 initiated a peer review of a project study, the Chief of En-
5 gineers shall consider, at a minimum, whether to initiate
6 a peer review at the time that—

7 (1) the without project conditions are identified;

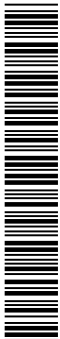
8 (2) the array of alternatives to be considered
9 are identified; and

10 (3) the preferred alternative is identified.

11 Nothing in this subsection shall be construed to require
12 the Chief of Engineers to conduct multiple peer reviews
13 for a project study.

14 (c) ESTABLISHMENT OF PANELS.—

15 (1) IN GENERAL.—For each project study sub-
16 ject to peer review under subsection (a), as soon as
17 practicable after the Chief of Engineers determines
18 that a project study will be subject to peer review,
19 the Chief of Engineers shall contract with the Na-
20 tional Academy of Sciences (or a similar independent
21 scientific and technical advisory organization), or an
22 eligible organization, to establish a panel of experts
23 to peer review the project study for technical and
24 scientific sufficiency.

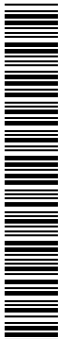


1 (2) MEMBERSHIP.—A panel of experts estab-
2 lished for a project study under this section shall be
3 composed of independent experts who represent a
4 balance of areas of expertise suitable for the review
5 being conducted.

6 (3) LIMITATION ON APPOINTMENTS.—An indi-
7 vidual may not be selected to serve on a panel of ex-
8 perts established for a project study under this sec-
9 tion if the individual has a financial or close profes-
10 sional association with any organization or group
11 with a strong financial or organizational interest in
12 the project.

13 (4) CONGRESSIONAL NOTIFICATION.—Upon
14 identification of a project study for peer review
15 under this section, but prior to initiation of any re-
16 view, the Chief of Engineers shall notify the Com-
17 mittee on Environment and Public Works of the
18 Senate and the Committee on Transportation and
19 Infrastructure of the House of Representatives of
20 such review.

21 (d) DUTIES OF PANELS.—A panel of experts estab-
22 lished for a peer review for a project study under this sec-
23 tion shall, consistent with the scope of the referral for
24 review—



1 (1) conduct a peer review for the project study
2 submitted to the panel for review;

3 (2) assess the adequacy and acceptability of the
4 economic and environmental methods, models, and
5 analyses used by the Chief of Engineers;

6 (3) provide timely written and oral comments to
7 the Chief of Engineers throughout the development
8 of the project study, as requested;

9 (4) submit to the Chief of Engineers a final re-
10 port containing the panel's economic, engineering,
11 and environmental analysis of the project study, in-
12 cluding the panel's assessment of the adequacy and
13 acceptability of the economic and environmental
14 methods, models, and analyses used by the Chief of
15 Engineers, to accompany the publication of the
16 project study.

17 (e) DURATION OF PROJECT STUDY PEER RE-
18 VIEWS.—

19 (1) DEADLINE.—A panel of experts shall—

20 (A) complete its peer review under this sec-
21 tion for a project study and submit a report to
22 the Chief of Engineers under subsection (d)(4)
23 within 180 days after the date of establishment
24 of the panel, or, if the Chief of Engineers deter-
25 mines that a longer period of time is necessary,



1 such period of time established by the Chief of
2 Engineers, but in no event later than 90 days
3 after the date a draft project study is made
4 available for public review; and

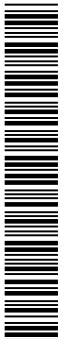
5 (B) terminate on the date of submission of
6 the report.

7 (2) FAILURE TO MEET DEADLINE.—If a panel
8 does not complete its peer review of a project study
9 under this section and submit a report to the Chief
10 of Engineers under subsection (d)(4) on or before
11 the deadline established by paragraph (1) for the
12 project study, the Chief of Engineers shall continue
13 the project study for the project that is subject to
14 peer review by the panel without delay.

15 (f) RECOMMENDATIONS OF PANEL.—

16 (1) CONSIDERATION BY THE CHIEF OF ENGI-
17 NEERS.—After receiving a report on a project study
18 from a panel of experts under this section and be-
19 fore entering a final record of decision for the
20 project, the Chief of Engineers shall consider any
21 recommendations contained in the report and pre-
22 pare a written response for any recommendations
23 adopted or not adopted.

24 (2) PUBLIC AVAILABILITY AND TRANSMITTAL
25 TO CONGRESS.—After receiving a report on a project



1 study from a panel of experts under this section, the
2 Chief of Engineers shall—

3 (A) make a copy of the report and any
4 written response of the Chief of Engineers on
5 recommendations contained in the report avail-
6 able to the public; and

7 (B) transmit to Congress a copy of the re-
8 port, together with any such written response,
9 on the date of a final report of the Chief of En-
10 gineers or other final decision document for a
11 project study that is subject to peer review by
12 the panel.

13 (g) COSTS.—

14 (1) IN GENERAL.—The costs of a panel of ex-
15 perts established for a peer review under this
16 section—

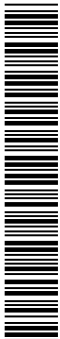
17 (A) shall be a Federal expense; and

18 (B) shall not exceed \$500,000.

19 (2) WAIVER.—The Chief of Engineers may
20 waive the \$500,000 limitation contained in para-
21 graph (1)(B) in cases that the Chief of Engineers
22 determines appropriate.

23 (h) APPLICABILITY.—This section shall apply to—

24 (1) project studies initiated during the 2-year
25 period preceding the date of enactment of this Act



1 and for which the array of alternatives to be consid-
2 ered has not been identified; and

3 (2) project studies initiated during the period
4 beginning on such date of enactment and ending 4
5 years after such date of enactment.

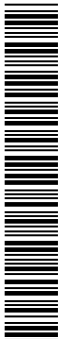
6 (i) REPORT.—Within 4 1/2 years of the date of enact-
7 ment of this section, the Chief of Engineers shall submit
8 a report to Congress on the implementation of this section.

9 (j) NONAPPLICABILITY OF FACCA.—The Federal Ad-
10 visory Committee Act (5 U.S.C. App.) shall not apply to
11 any peer review panel established under this section.

12 (k) SAVINGS CLAUSE.—Nothing in this section shall
13 be construed to affect any authority of the Chief of Engi-
14 neers to cause or conduct a peer review of a water re-
15 sources project existing on the date of enactment of this
16 section.

17 (l) DEFINITIONS.—In this section, the following defi-
18 nitions apply:

19 (1) Project study.—The term “project study”
20 means a feasibility study or reevaluation study for a
21 project. The term also includes any other study asso-
22 ciated with a modification or update of a project
23 that includes an environmental impact statement, in-
24 cluding the environmental impact statement.



1 (2) AFFECTED STATE.—The term “affected
2 State”, as used with respect to a project, means a
3 State all or a portion of which is within the drainage
4 basin in which the project is or would be located and
5 would be economically or environmentally affected as
6 a consequence of the project.

7 (3) ELIGIBLE ORGANIZATION.—The term “eligi-
8 ble organization” means an organization that—

9 (A) is described in section 501(c)(3), and
10 exempt from Federal tax under section 501(a),
11 of the Internal Revenue Code of 1986;

12 (B) is independent;

13 (C) is free from conflicts of interest;

14 (D) does not carry out or advocate for or
15 against Federal water resources projects; and

16 (E) has experience in establishing and ad-
17 ministering peer review panels.

